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REPORT TO THE LEGISLATURE

Sunset Review

BOARD OF ATHLETICS

The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to continue or modify the Board.

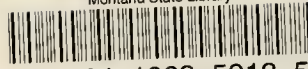
This report presents ten areas for Legislative consideration (page 16) including:

- ▶ The enforcement of laws and rules pertaining to boxing.
- ▶ The need for regulating professional boxing and professional wrestling.
- ▶ Board funding process.

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LEGISLATIVE AUDITOR

August 1980

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The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Athletics. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Athletics, the Governor's Office of Budget and Program Planning, and the World Boxing Association.

We wish to express our appreciation to the members of the board and the the director of the department and his staff for the assistance they provided during the review.

Respectfully submitted,

A handwritten signature in cursive script that reads "Morris L. Brusett".

Morris L. Brusett, C.P.A.
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF ATHLETICS

		<u>Term Expires</u>
Patrick J. Connors Chairman	Anaconda	1981
Charles A. George	Laurel	1982
Neil Kirkness	Billings	1983

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Ed Carney	Director
Mary Lou Crawford	Administrative Assistant



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Chapter I

BACKGROUND

This sunset performance review addresses state regulation of professional boxing and wrestling by the Board of Athletics, a state board within the Department of Professional and Occupational Licensing.

REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Athletics. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must examine the need for each regulatory board/agency, and the Legislative Audit Committee must offer recommendations for board/agency reestablishment or modification.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?
- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the profession, and interested members of the public.

In defining legislative intent, the sunset law states that, by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and programs exist only to be responsive to state residents' needs. The sunset law terminates the board on July 1, 1981. This sunset performance review is in response to the legal requirement for a review prior to the board's termination.

PROFESSIONAL BOXING AND WRESTLING

The Administrative Rules of Montana (A.R.M.) defines professional boxers and wrestlers as those who receive remuneration directly or indirectly as consideration for their performance in such contests or exhibitions.

While regulated by the same board, professional boxing and wrestling differ greatly in their athletic

nature and purpose. According to The Concise Encyclopedia of Sports, the evolution of professional wrestling in the U.S. has been such that between 1900 and 1930 the sport was transformed from highly skilled and scientific contests to virtual theatrical performances, and it has remained generally unchanged since that time. In these exhibitions, wrestling rules are often violated as part of the exhibition, and the success of a professional wrestler may often depend more on acting abilities than true wrestling abilities.

By modern standards, the growth of professional boxing in the U.S. began in 1892 when James J. Corbett knocked out John L. Sullivan to become the first heavyweight champion under the Marquess of Queensbury Rules. With a steady rise in the popularity of boxing, New York became the first state to regulate the sport in 1896. Between 1900 and 1920, the number of boxers increased, while weight divisions and championships proliferated, often created by the fighters or their managers. In response to this trend, an increasing number of states (including Montana) established boxing or athletic commissions to formalize rules and weight classes.

Professional boxing in Montana has evolved from bare knuckles prize fights in the nineteenth century to present day matches conducted under the sanction of the Board of Athletics.

According to board records, from 1975 through 1979 there were 16 professional boxing matches promoted in this state, with gross ticket receipts in excess of \$180,000. During the same period, 44 professional wrestling exhibitions were staged, with gross receipts of more than \$50,000.

Chapter II
BOARD OF ATHLETICS

INTRODUCTION

Regulation of professional boxing and wrestling in Montana was initiated in 1920. A referendum was approved in November of that year providing for an act establishing athletic commissions in each county. The act called for fifty percent of the net receipts from boxing, sparring, and wrestling exhibitions to be held in the state treasury for use in support of disabled veterans. In December, 1920 the act became effective under proclamation of the governor.

In 1927, the legislature amended the law in order to provide for a state athletic commission rather than county commissions. The act also amended the previous tax, calling instead for 5 percent of the gross receipts from boxing and wrestling exhibitions to be placed in a "Veterans' Memorial Fund", to be used for the expenses of the commission and for construction and maintenance of a Veterans' Memorial Building.

In 1974, legislation was enacted which changed the "Athletic Commission" to the current "Board of Athletics." It further provided for the 5 percent tax on receipts to be placed in an earmarked revenue account to fund board activities.

The statutory duties of the board are as follows:

1. Direct, manage, control, and adjudicate all professional boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within Montana by an individual, club, corporation, or association.
2. Grant or revoke licenses to individuals, clubs, corporations, or associations for conducting, holding, or giving professional boxing, sparring, and wrestling matches and exhibitions.
3. Establish rules for the proper conduct of licensees in holding professional boxing, sparring, and wrestling matches and exhibitions.

BOARD OPERATIONS

Structure

The board is composed of three members. Each member is appointed by the governor to a three-year term, with no restriction on the number of terms a member may serve. A chairman is elected annually from among the members.

The board usually meets in April each year; however, meetings may be held more frequently if necessary. The law states that board members "shall serve without compensation but shall be allowed travel expenses," when engaged in official state business.

Staffing and Funding

For administrative purposes only, the board operates within the Department of Professional and Occupational Licensing. The department currently allocates .05 full-time equivalent positions (104 hours per year) to the board for various duties, the majority of which

are performed by an administrative assistant. They include keeping a record of meeting minutes; maintaining the board's books, documents, and papers; preparing notices and other papers required by the board; and issuing licenses granted by the board. The duties of "inspector" are also performed by the administrative assistant assigned by the department. These duties entail representing the board at boxing and wrestling events in order to enforce the laws and rules.

The board is financed from an account in the earmarked revenue fund. All money in the account is provided through a 5 percent tax on the gross receipts of all boxing, sparring, or wrestling exhibitions held in the state. Fees collected for licenses issued to promoters (individuals, clubs, associations, corporations) are also placed in the account. Currently, the annual fee for a promoter's license is \$100.

In the past, individual boxers, wrestlers, managers, and certain officials were also licensed by the board. In 1978 this practice was stopped when the board was advised by the Administrative Code Committee during recodification of the A.R.M. that it lacked the statutory authority to license anyone other than promoters.

Presented in Illustration 1 is the financial history of the board from fiscal year 1973-74 through 1978-79. Fund balances are as of June 30 of each year.

FINANCIAL HISTORY

<u>Fiscal Year</u>	<u>Revenues</u>	<u>Expenditures*</u>	<u>Fund Balance</u>
1978-79	\$6,934	\$2,106	\$14,658
1977-78	2,298	1,511	9,830
1976-77	2,313	2,367	9,043
1975-76	2,041	2,149	9,097
1974-75	1,510	911	9,205
1973-74	929	1,726	8,606

*Includes prior year expenditures, adjustments, and accruals.

Source: Compiled by the Office of the Legislative Auditor, based on the Montana Financial Reports

Illustration 1

The substantial increase in board revenues from fiscal year 1977-78 to fiscal year 1978-79 was due to an increase in the number of boxing and wrestling exhibitions held, as well as generally higher attendance at individual boxing matches. Illustration 2 provides a breakdown of board revenue for fiscal years 1977 through 1979.

BOARD REVENUE FROM EXHIBITIONS

<u>Fiscal Year</u>	<u>Boxing Exhibitions</u>	<u>Boxing 5% Tax</u>	<u>Wrestling Exhibitions</u>	<u>Wrestling 5% Tax</u>	<u>License Fees</u>	<u>Total Revenue</u>
1978-79	6	\$5137	25	\$1397	\$400*	\$6934
1977-78	5	\$1375	1	\$148	\$775	\$2298
1976-77	4	\$1503	0	0	\$810	\$2313

*Fees collected for Promoter's License only

Source: Compiled by the Office of the Legislative Auditor based on board records.

Illustration 2

BOARD GOALS AND OBJECTIVES

The sunset law requires each board to define its goals and objectives. The goals defined by the Board of Athletics are:

1. To protect the public from fraud in athletic events, and to issue licenses to professional boxers and wrestlers to make sure that all contestants are competent and qualified athletes.*
2. The Board of Athletics is responsible for protecting the public from fraud in athletic events and for issuing licenses to those participating in professional athletic events.*
3. To assure the public that professional boxing and wrestling events are held in compliance with the law and rules of the board.

*Note: (See 1978 change in board licensing, page 7.)

Its objective is:

To assure the public that professional boxing and wrestling events are held in compliance with the rules and regulations and that all athletes are certified for physical fitness prior to an athletic event by a licensed medical practitioner.

BOARD FUNCTIONS

Licensing

As previously stated, promoters' licensure is currently required for professional boxing or wrestling to be held in Montana. Specifically, the law allows the board to grant licenses to individuals, clubs, corporations, or associations who wish to conduct, hold, or give boxing, sparring, or wrestling exhibitions in this state. The licenses are effective from January 1 to December 31 of each year.

Applications for promoter licensure must be made in writing to the Department of Professional and Occupational Licensing and must show proof that the applicant is entitled to receive a license. Before a license is granted an applicant must file a surety bond of \$5,000 with the department.

Within 24 hours after an exhibition has been staged by a licensee, a written report must be made to the department showing the number of tickets sold and the amount of the gross proceeds. During this time, the licensee must also pay 5 percent of the gross proceeds of ticket sales to the department. This money is deposited in the earmarked revenue account for use by the board.

Illustration 3 shows the number of promoters' (boxing and wrestling) licenses issued during the past seven calendar years.

<u>Calendar Year</u>	<u>NUMBER OF LICENSES ISSUED BY THE BOARD</u>		<u>Total</u>
	<u>Boxing</u>	<u>Licenses Issued (Promoter) Wrestling</u>	
1979	2	2	4
1978	1	2	3
1977	2	1	3
1976	1	0	1
1975	0	0	0
1974	0	0	0
1973	2	0	2

Source: Department of Professional and Occupational Licensing.

Illustration 3

There is no distinction made between "new" and "renewed" licenses. All licenses cost the same no matter when they are purchased.

Rule Making and Enforcement

Montana statutes require licensees to follow all rules which the board makes regarding the conduct of professional boxing and wrestling matches or exhibitions. The rules under which the board operates are incorporated in the Administrative Rules of Montana (A.R.M.). They address a variety of factors, including contracts, equipment specifications, duties of officials, and contest regulations. Any questions regarding professional boxing or wrestling which are not covered in the A.R.M. are subject to the decisions of the board or its representatives.

The law (sections 23-3-204, 23-3-205, MCA) provides for revocation of promoters' licenses for conducting fake boxing matches, and further provides for restraint or disqualification of boxers who knowingly participate in fake matches. This section of the statutes omits any reference to fake or sham wrestling matches. During the past six fiscal years no licenses have been revoked under this section.

Complaints

When necessary, the board may investigate and resolve complaints which may be made against those individuals or organizations within its jurisdiction;

however, since fiscal year 1973-74, only two complaints have been filed with the board. Illustration 4 provides a summary of the complaints.

SUMMARY OF COMPLAINTS

<u>Date</u>	<u>From</u>	<u>Nature of Complaint</u>	<u>Board Action</u>
10-29-79	Employee of promoter	Bad check issued by promoter	Notice sent requiring payment
03-27-80	Public	Individual allegedly attacked and injured by professional wrestler	The complainant did not pursue the matter and the case was considered closed

Source: Compiled by the Office of the Legislative Auditor based on board records.

Illustration 4

Other Functions

In addition to its other functions, the board must sanction every boxing or wrestling match held in Montana. As stated in the administrative rules, "Any organization or person holding an annual license must obtain a separate permit or sanction from the board before holding any specific boxing or wrestling contests." Prior to issuing such sanction for proposed contests the names and weights of all contestants, as well as all contracts, must be on file with the board.

EXEMPTIONS FROM REGULATION

As specified in the law (section 23-3-201, MCA), the board's jurisdiction over all boxing, sparring, and wrestling matches held within Montana ". . . does not

apply to or prohibit amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums."

Chapter III

OTHER REGULATION

FEDERAL AND STATE REGULATION

Currently, there is no federal involvement in the regulation of professional boxing or wrestling.

Section 7-21-4211, MCA, vests in city or town councils, the ". . . power to prevent and prohibit prizefights, boxing matches of any kind, with or without gloves, or exhibition of prizefighters, boxers, or sluggers in the city or town or within 5 miles thereof."

Professional Association

Historically, the Board of Athletics has been a member of the World Boxing Association (WBA). Members of the association are obligated to comply with the rules and regulations established by the WBA for sanctioned world championship fights. According to the WBA constitution, however, its rules cannot be binding on any member if they are contrary to the laws of the state. Thus, if the WBA rules are in conflict with the laws of Montana, a sanctioned fight cannot be held in this state.

Regulation in Other States

The rules and conventions of professional boxing and wrestling have developed in such a manner that regulation is similar throughout the country. The administrative agencies responsible for licensing

and/or enforcement vary somewhat. Licensing is the responsibility of state governments in 40 states (including the District of Columbia), while in 4 states responsibility for control rests with local governments. In seven states there is no provision for formal regulation of professional boxing or wrestling.

In recent years some states have conducted reviews of their boxing/wrestling regulatory agencies, resulting in some modification of regulation. This is discussed further on page 18.

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of various aspects of regulation may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Athletics.

The areas for consideration include:

1. Enforcement of rules and standards.
2. Regulation of professional boxing.
3. Regulation of professional wrestling.
4. Sanctioning by the administrative assistant.
5. Board members officiating at contests.
6. Board funding.
7. Disposition of license fees.
8. Licensing boxers.
9. Board member compensation.
10. Appointment of members.

ENFORCEMENT OF RULES AND STANDARDS

The board has established a comprehensive set of administrative rules concerning the proper conduct of professional boxing and wrestling matches held in Montana. One of the goals which the board listed was "To assure the public that professional boxing and wrestling events are held in compliance with the law and rules of the board." Upon examination of board records, however, it became apparent that in some

instances the board has not enforced procedures provided in both the statutes and its own rules. For example:

1. Files indicate that during 1978 one promoter staged five boxing matches; however, there is no record of a license being issued to the individual for that year.
2. During 1979 one individual had allegedly committed various violations of the rules in his promotion of a boxing match. Board action in this matter consisted of meeting with the individual privately and "off the record" to discuss problems. No official record exists of the manner in which they were resolved by the board. Such actions by the board may be in conflict with laws pertaining to open meetings. (2-3-201 through 2-3-212, MCA)
3. In 1980 the board sanctioned a professional boxing exhibition which was held under a new and different format than other professional matches. Incorporated in this exhibition were untrained individuals who were given "professional boxer" status, different weight divisions than are specified in the board's rules, and provisions for some boxers to engage in two bouts during the same night, contrary to board rules stating that a boxer competing in a bout of less than ten rounds shall not be allowed to box again ". . . until six days have elapsed." Furthermore, no board member or inspector was in attendance as required by the rules and no club report was filed as required by section 23-3-206, MCA.
4. Instances were noted in which the promoter's bond being held was less than the \$5,000 required by the board rules.
5. Examination of various club reports of boxing matches revealed instances in which the scoring of bouts was recorded by judges in standard graphite pencil. This is contrary to the board's A.R.M. provision that scoring be done with indelible pencil or pen.

By failing to consistently enforce the laws and rules pertaining to professional boxing and wrestling, the board is not achieving its stated goal.

REGULATION OF PROFESSIONAL BOXING

In recent years five states have completed sunset reviews of their boards or commissions which regulate professional boxing. Among the findings of those reviews:

--". . . no evidence was produced to demonstrate that the absence of regulation . . . would pose a threat to the public health, safety, or welfare."
Tennessee

--"To have a special State commission overseeing fight promotion is inconsistent with the State's lack of involvement with the promotions of other events, such as concerts and theatrical performances."
Colorado

--"It is thought that professional boxing and professional wrestling exhibitions may easily be regulated by the same contracting mechanisms that other businesses use in the day to day conduct of their affairs within the state of South Dakota."
South Dakota

In the three states cited above the commissions were terminated under the sunset laws. In each instance, the issue of safety of the boxing contestants was of importance. For example, while Tennessee and Colorado terminated their regulatory commissions, they both retained certain statutory requirements for the protection of the boxers. (Requirements such as ringside physician and pre-fight physical examination.)

In two other states, Nebraska and Alabama, regulation was continued; however, certain modifications were made. The findings of the Nebraska review included:

" . . . although laws and rules are established for regulation of amateur and professional boxing and wrestling, they may not be consistently and effectively enforced."

The review noted that the problems found in the enforcement of rules had not resulted in any apparent harm to the public. Under such circumstances, therefore, the review also pointed out that the absence of regulation might have " . . . little, if any, effect upon the public health, safety, or welfare." In light of these findings, the alternatives the legislature considered included termination of the State Athletic Commissioner's Office, or continuance of the office with " . . . stronger enforcement of statutory, and rules and regulations authority." The legislature opted for retaining the Athletic Commissioner and established a three-member advisory panel to assist when necessary.

Alabama also reinstated its regulatory board with some modification, including a change in the procedures involved in the collection of tax revenues from boxing and wrestling events.

According to the goals delineated by the Montana board, its primary function is the protection of the public from fraud by assuring that professional boxing

and wrestling events are held in compliance with the law and rules of the board. As pointed out, however, examples have been noted in which the law or rules of the board have not been enforced. Thus, by the board's standards, the public is not being adequately protected from potential fraud. Despite this, there have been no public complaints or other evidence of public harm relating to professional boxing.

As was the case in Nebraska, this situation suggests that the need for regulation of professional boxing may be questionable. If it is determined that regulation is needed, then it should be effectively and consistently enforced.

REGULATION OF PROFESSIONAL WRESTLING

In recent years there have been many wrestling matches at which no board member or representative has been in attendance to enforce the rules of the board. The board does not put much emphasis on the regulation of professional wrestling. One board member described wrestling as an exercise in showmanship and likened its conduct to that of a circus.

Those sections of the statutes (23-3-204, 23-3-205, MCA) dealing with penalties for conducting or participating in sham or fake exhibitions refer only to professional boxing. In its omission of reference to professional wrestling the law has apparently recognized the character of the "sport;" for in almost every

case, according to The Concise Encyclopedia of Sports, the outcome of a match is predetermined, and many of the wrestling rules are routinely violated.

Board members expressed the opinion that professional wrestling should be regulated for the protection of all concerned; however, in light of its staging of exhibitions, and the lack of board emphasis on the enforcement of rules, the need for regulation of professional wrestling is questionable.

SANCTIONING BY THE ADMINISTRATIVE ASSISTANT

In January 1980 the board chairman authorized the administrative assistant to sanction wrestling events for the board. According to the law (section 23-3-201, MCA) "the board has the sole direction, management, control, and jurisdiction" over wrestling exhibitions held in the state. By authorizing the administrative assistant to sanction such exhibitions, it is possible that the board is delegating a function which is the board's statutory obligation.

BOARD MEMBERS OFFICIATING AT CONTESTS

Upon examination of board files, it became evident that on some occasions a member of the board has served in the paid position of timekeeper at boxing matches. The administrative rules under which the board operates specify that the timekeeper is to be appointed by the promoting organization. Under such circumstances the board member may be compromising his official position

of enforcing the law and rules of the board by also serving in a position appointed by the promoter.

BOARD FUNDING

As of March 1980, the board had completely exhausted the funds appropriated for its operations in fiscal year 1979-80. Under these circumstances the board was forced to cease all statutory functions for the remainder of the fiscal year.

In an effort to avert the halting of operations, the Department of Professional and Occupational Licensing requested a budget amendment in behalf of the board, citing an earmarked revenue account balance in excess of \$14,000 from which to obtain additional funds. The requested amendment was denied because it did not ". . . meet the criteria of 'emergency' specified in Section 3 of HB 483 with respect to budget amendments or section 17-7-301, MCA, with respect to supplemental appropriations."

In this matter, consideration should be given to two points. First, no definition of "emergency" is provided in either section 3, HB 483, or section 17-7-301, MCA. With no criteria as to what constitutes an emergency, the determination becomes a subjective one which must be based upon documentation of the proposed amendments. In the case of the Board of Athletics, information was provided which explained much of the unanticipated need for additional funding.

Moreover, the justification for the proposed amendment was considered "complete" by the determining agency, yet the request was denied. In view of this situation, it may be appropriate to define what constitutes an "emergency" for the purposes of evaluating proposed budget amendments.

The second point concerns the statute (section 23-3-206, MCA) which specifies that a 5 percent tax on the gross proceeds of all boxing and wrestling events will be for the use of the board. With denial of the proposed budget amendment, the board was prohibited from using the tax money paid by promoters. According to the administrative rules, all boxing and wrestling matches must be sanctioned by the board. Thus, with the board forced to cease operations for the remainder of the fiscal year, those promoters wishing to hold matches are prevented the opportunity of pursuing their professions during that time.

There may be substantial variation in the number of professional boxing and wrestling shows promoted in any given year; yet all, by law, require board sanction. Under these circumstances, it is difficult to consistently predict funding needs on a year-to-year basis. Therefore, it may be fitting that special consideration be given to the financial position and unique budgeting requirements of the board.

The Office of Budget and Program Planning has concurred with this, expressing the view that the budget amendment process is not flexible enough to permit effective operation of regulatory boards in some unanticipated situations. This issue, as it applies to all boards, will be addressed further in a performance review of the Department of Professional and Occupational Licensing.

DISPOSITION OF LICENSE FEES

Section 23-3-206, MCA, requires that the tax on the gross receipts of ticket sales to boxing and wrestling exhibitions be deposited in the earmarked revenue fund. However, while the laws pertaining to most other regulatory boards include provisions for the disposition of license fees, no such provision exists for the \$100 fees collected by the board for promoters' licenses.

LICENSING BOXERS

As previously noted (page 7), the board stopped licensing boxers in 1978 and removed some of the parts of the administrative rules which called for such licensure; however, section 40-3-14(10)-S14010, A.R.M., still includes language requiring licensure of boxers. Due to the fact that the board has no statutory authority for such licensure, this requirement should be removed from the administrative rules.

BOARD MEMBER COMPENSATION

As noted in Chapter 11, members of the board receive only travel expenses when engaged in official business. Members of most other boards receive \$25 per day plus travel expenses. The Legislative Audit Committee has recommended that members of all regulatory boards be compensated equally.

APPOINTMENT OF MEMBERS

Gubernatorial appointments to the board are not subject to Senate confirmation as in the case with some other boards. The Legislative Audit Committee has recommended that appointments to all regulatory boards be subject to Senate confirmation.

